

FILED

## MODEL FORM FOR MOTIONS UNDER 28 USC 2255

2005 JUN 27 PM 12:05

U.S. DISTRICT COURT IN THE UNITED STATES DISTRICT COURT  
N.D. OF ALABAMA FOR THE NORTHERN DISTRICT OF ALABAMA

CV-05-J-8057-S

NAME Lee Michelle SchuchPRISON NUMBER 66528-C10PLACE OF CONFINEMENT Federal Medical Center, CarswellADDRESS P.O. Box 27137 Fort Worth, Texas 76127

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

CASE NO. \_\_\_\_\_ (to be supplied by Clerk U.S. District Court)

UNITED STATES OF AMERICA,

v.

Lee Michelle Schuch

(FULL NAME OF MOVANT)

(If movant has a sentence to be served in the FUTURE under a federal judgment which he wished to attack, he should file a motion in the federal court which entered the judgment.)

## MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

## Instructions - Read Carefully

(1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

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**(3) Upon receipt, your motion will be filed if it is in proper order. No fee is required with this motion.**

**(4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed IN FORMA PAUPERIS in which event you must execute the declaration on the last page, setting forth information establishing your inability to pay the costs. If you wish to proceed IN FORMA PAUPERIS, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.**

**(5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each such judgment.**

**(6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.**

**(7) When the motion is fully completed, the ORIGINAL and TWO COPIES must be mailed to:** **CLERK, UNITED STATES DISTRICT COURT**  
**1729 FIFTH AVENUE NORTH**  
**BIRMINGHAM, ALABAMA 35203**

**(8) Motions which do not conform to these instructions will be returned with a notation as to the deficiency.**

**MOTION**

1. Name and location of court which entered the judgment of conviction under attack, and case number: United States Northern District of Alabama  
Case # 2:03-cr-00049-IPJ-PWG-ALL
2. Date of judgment of conviction October 16, 2003
3. Length of sentence 168 months
4. Nature of offense involved (all counts) Counts 1-3 - Transporting and Shipping Material Involving Sexual Exploitation of a minor

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**5. What was your plea? (Check one)**

(a) Not guilty ( )  
(b) Guilty (✓)  
(c) Nolo contendere ( )

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: 7/7

**6. Kind of trial: (Check one)**

(a) Jury ( )  
(b) Judge only (✓)

**7. Did you testify at the trial?**

Yes ( ) No (✓)

**8. Did you appeal from the judgment of conviction?**

Yes (✓) No ( )

**9. If you did appeal, answer the following:**

(a) Name of court United States District Court of Northern California  
(b) Result Denied  
(c) Date of result July 7, 2004

**10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court? Yes ( ) No (✓)**

**11. If your answer to 10 was "Yes", give the following information:**

(a) (1) Name of court 7/7  
(2) Nature of proceeding 7/7

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(3) **Grounds raised** 7/14  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) **Did you receive an evidentiary hearing on your petition, application, or motion? Yes ( ) No ( )**

(5) **Result** 7/14

(6) **Date of result** 7/14

(b) **As to any second petition, application or motion, give the same information:**

(1) **Name of court** 7/14

(2) **Nature of proceeding** 7/14

(3) **Grounds raised** 7/14  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) **Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( )**

(5) **Result** 7/14

(6) **Date of result** 7/14

(c) **As to any third petition, application or motion, give the same information:**

(1) **Name of court** 7/14

(2) **Nature of proceeding** 7/14

(3) **Grounds raised** 7/14  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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(4) **Did you receive an evidentiary hearing on your petition, application or motion?** Yes  No

(d) **Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?**

(1) **First petition, etc.** Yes  No   
(2) **Second petition, etc.** Yes  No   
(3) **Third petition, etc.** Yes  No

(e) **If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:** 17/A  
\_\_\_\_\_  
\_\_\_\_\_

**12.** State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

**CAUTION:** If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

**Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.**

(a) **Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.**

(b) **Conviction obtained by use of coerced confession.**

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- (c) Conviction obtained by use of evidence obtained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. **Ground one:** Denial of effective assistance of counsel

**Supporting FACTS (tell your story briefly without citing cases or law):**

While in court there were things brought out that I told Mr. Calfee I didn't do and he said "Then how else did they get them, and to just listen."

B. **Ground two:** The acknowledgement of Plea Agreement

**Supporting FACTS (tell your story briefly without citing cases or law):**

I believe that I signed a plea agreement for 8 to 10 years and yet I got 14 years (168 months) Plea agreement filed 6-24-2003

C. **Ground three:** 7/1/A

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**Supporting FACTS (tell your story briefly without citing cases or law):**

1/1/1

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**D. Ground four:** 1/1/1

**Supporting FACTS (tell your story briefly without citing cases or law):**

1/1/A

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**13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:**

1/1/A

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**14. Do you have any petition or appeal now pending in any court as to the judgment under attack? Yes  No**

**15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:**

**(a) At preliminary hearing** Donald L. Colee Sr.

**(b) At arraignment and plea** Donald L. Colee Sr.

**(c) At trial** Donald L. Colee Sr.

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(d) At sentencing Donald L. Cole Jr.

(e) On appeal Donald L. Cole Jr.

(f) In any post-conviction proceeding 11/A

(g) On appeal from any adverse ruling in a post-conviction proceeding 11/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time? Yes  No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes  No

(a) If so, give name and location of court which imposed sentence to be served in the future: 11/A

(b) And give date and length of sentence to be served in the future: 7/1/

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes  No

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on June 21, 2005 (date).

\_\_\_\_\_  
Signature of Movant